In the High Court of Uttaranchal, Nainital.

First Appeal From Order No. 340/2000
A.O. No. 889/2001

Bhagat Singh S/o Raghuveer Singh
R/o 19, Yadav Nagar, Samaipur,
Delhi- 110042 …..Appellant/Claimant.

Versus

1- Navin Chand S/o Ganga Dutt
R/o Devla Talla Panjaya
P.S. Haldwani, Nainital
(Owner of Vehicle USZ-4438)

2- Oriental Insurance Company

3- Nafees Ahmad S/o Shareef Ahmad
R/o Kaladhungi Road Haldwani
(Owner of Vehicle U.P.02/6194)

4- New India Insurance Company Respondents/O.Ps.

Sri Z.U. Siddiqui, Advocate for the appellant.
Sri Deep Chandra Joshi, Advocate for respondents.

Coram: Hon'ble P.C. Verma, J.
Hon'ble B.C. Kandpal, J.

Dated: 01-05-2006

This First Appeal from Order arises out against the judgment and order dated 15.1.2000, passed by Motor Accident Claim Tribunal/Special Judge (C.B.I.), Nainital in M.A.C. No. 299/1996 (Bhagat Singh Vs. Navin Chand and others).

2- Brief facts of the case are that the appellant Bhagat Singh was going to Nainital on 22-6-1996 by Maruti Van having registration No. U.P. 02-B- 6194. The Van was trying to take over a truck and in this process this Van dashed with a jeep No. USZ-4438. It was alleged in the claim petition that the driver of Maruti Van was driving the vehicle with rash and negligence. The driver of the jeep was also rash and negligent at the time of the accident and on account of the contributory rash and negligence of both the drivers the appellant sustained grievous injuries on his person. The appellant, therefore, claimed a compensation of Rs. 10,00,000/- on account of the injuries sustained by him in this accident.

3- Written statements were filed by the owners of the vehicles as well as by the insurers. Both the parties adduced their evidence and thereafter the Tribunal allowed the claim petition of the appellant and directed the Insurance Companies for making payment of Rs. 35,785/. The learned Tribunal was of the view that drivers of both the vehicles were negligent, hence directed both the Insurance Companies, i.e. New India Insurance Company as well as Oriental Insurance Company to pay 50% each of the awarded amount to the appellant vide judgment and order dated 15.1.2000.

4- Feeling aggrieved by the aforesaid judgment and order, the claimant has filed the appeal before this Court.

5- Heard learned counsel for the parties and perused the record.

6- Learned counsel for the appellant has argued that the Tribunal has illegally and wrongly calculated the amount of the compensation. The pecuniary loss caused to the appellant has also not been considered properly as the appellant was prevented from performing his routine business on account of his hospitalization for a long time.

7- The evidence on record shows that the accident had taken place on account of contributory negligence of the drivers of both the vehicles. The doctor has been examined as P.W.2 before the court below and he has also proved the injury report of the claimant/appellant. The statement of the doctor nowhere shows that the appellant had become disable on account of the injuries sustained by him. Further no disability certificate has been produced by the claimant/appellant before the court below. Therefore the learned has rightly concluded that the disability is not proved merely on account of a fracture in the leg.

8- As far as the amount which has been paid to the claimant/appellant is concerned, the record reveals that the claimant has filed the medical bill worth Rs. 12,600/- as well as a bill for Rs. 5,500/- for operation and Rs. 310/- for rod. The claimant has also produced bills for the travelling by car which shows that the car must have been used for taking the claimant to

the hospital in connection with his treatment. The Claim Tribunal has also rightly awarded an amount of Rs. 15,000/- to the claimant/appellant for mental and physical agony.

9- We are, therefore, of the view that the amount of Rs. 35,785/- has been rightly awarded to the claimant/appellant on account of the injuries sustained by him in the accident.

10- The impugned judgment and order passed by the Motor Accident Claim Tribunal does not suffer with any illegality or infirmity.

11- The appeal thus lacks merit and is liable to the dismissed.

12- Accordingly the appeal is dismissed. The impugned judgment and order dated 15-1-2000, passed by the Motor Accident Claim Tribunal, Nainital in MAC No. 299/1996 is hereby confirmed.

(B.C. Kandpal, J.) **(P.C. Verma, J.)**

ISB